IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMONS FOR JDUGMENT NO.3630 OF 2006

IN

ARBITRATION PETITION NO.340 OF 2004

Surman Investments Ltd. ...Petitioners

v/s

Libord Securities Ltd. and anr. ...Respondents

Ms Vimla D'Souza i/b Ms Nita Madhwani for Petitioners.

Mr H.V. Chande for Respondents.

CORAM : D.K. DESHMUKH J.

DATE : 7TH NOVEMBER 2006.

P.C. :-

1. This notice of motion has been taken out by the petitioners for restoration of arbitration petition which was filed under section 34 of the Arbitration and Conciliation Act 1996. By the award, which is impugned in the petition, a direction has been issued to the petitioners by the Arbitrator to pay an amount approximately of Rs.50,000/-. The petition was on final hearing board for months together. The petitioners never appeared. On the date on which it was dismissed for default, again the petitioners did not appear. The only excuse that is given is that the Clerk of the Advocate did not notice the matter on the board. The excuse is incapable of being accepted. Filing of a petition under section 34 in the scheme of Arbitration Act operates as a stay of conversion of the award into a decree. Therefore, arbitration petition has to be prosecuted diligently. As the amount awarded is only about Rs.50,000/- I put it to the learned counsel appearing for petitioners that if the petitioners are willing to deposit the amount in Court, the question of restoring the petition would be considered positively though the petitioners do not deserve an opportunity to be heard on merit. The learned counsel appearing for petitioners, after taking instructions, informed me that

the petitioners are not in a position to deposit the amount. Taking overall view of the matter therefore, in my opinion, restoration of such a petition will not be in the interest of justice. The award, which was impugned in the petition, on dismissal of the petition, has become a decree. Now if the petition is restored, the award will loose its status as a decree. Therefore, unless there is very good cause shown, the petition cannot be restored as a matter of course. Notice of motion is therefore dismissed.

. Parties to act on the copy of this order duly authenticated by the Associate / Private Secretary as true copy.

. Certified copy expedited.